

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 15-06 Pub.Rec./Expunging and Sealing Criminal History Records

**SPONSOR(S):** Criminal Justice Subcommittee; Latvala

**TIED BILLS:** PCB CRJS 15-05 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cox	Cunningham

### SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes guarantee every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24 of the State Constitution after meeting certain requirements.

Currently, every person seeking to expunge or seal a record must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) and then petition a court to expunge or seal the record. When a court orders a criminal history record to be expunged, criminal justice agencies other than FDLE must physically destroy the record. Only FDLE may retain expunged records. When the court orders a record to be sealed, it is not destroyed, but access is limited to specified entities. Expunged and sealed records are confidential and exempt from public records, and it is a first degree misdemeanor to divulge their existence.

PCB CRJS 15-05, which is tied to this PCB, makes substantial changes to Florida's expunge and seal laws by creating nonjudicial processes for the expunction and sealing of criminal history records. The bill retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication.

PCB CRJS 15-05 expands the types of records that may be expunged or sealed by:

- Creating s. 943.0584, F.S., which permits a person to obtain an unlimited number of "nonjudicial expunctions" for records that resulted in a no-information, a dismissal, a dismissal based on the lawful self-defense exception, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- Amending ss. 943.0585 and 943.059, F.S., to permit a person to obtain one court-ordered expunction or "nonjudicial sealing" of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; and
- Amending s. 943.059, F.S., to permit a person to obtain one "nonjudicial sealing" of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction.

The PCB makes records expunged or sealed pursuant to PCB CRJS 15-05 confidential and exempt from public records. The PCB repeals the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.**

The bill does not appear to have a fiscal impact on state or local government.

The bill takes effect on the same date as PCB CRJS 15-05 or similar legislation relating to expunging and sealing of criminal history records takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Public Records**

Article I, section 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24 of the State Constitution, provided the exemption is passed by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to accomplish its purpose.<sup>2</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>3</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of such exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>4</sup> The Act also requires specified questions to be considered during the review process.

#### **Sealing and Expunging Criminal History Records**

Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records.<sup>5</sup> Currently, every person seeking to expunge or seal a record must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) and then petition a court to expunge or seal the record.<sup>6</sup> When a court orders a criminal history record to be expunged, criminal justice agencies other than FDLE must physically destroy the record.<sup>7</sup> Only FDLE may retain expunged records.<sup>8</sup> When the court orders a record to be sealed, it is not destroyed, but access is limited to specified entities.<sup>9</sup>

Records that are expunged under s. 943.0585, F.S., are confidential and exempt from public records laws and are not available to any person or entity except as provided by a court order.<sup>10</sup> In contrast,

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> FLA. CONST. art. I, s. 24(c).

<sup>3</sup> See s. 119.15, F.S.

<sup>4</sup> s. 119.15(3), F.S.

<sup>5</sup> A "criminal history record," for this purpose, is any nonjudicial record maintained by a criminal justice agency containing criminal history information. "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. s. 943.045(5) and (6), F.S.

<sup>6</sup> ss. 943.0585 and 943.059, F.S.

<sup>7</sup> s. 943.0585(4), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> s. 943.059(4), F.S.

<sup>10</sup> s. 943.0585(4)(c), F.S.

records that are sealed under s. 943.059, F.S., are also confidential and exempt from public records laws, but are available to specified entities.<sup>11</sup>

Persons who have had their record expunged or sealed may lawfully deny or fail to acknowledge arrests in the record, except when applying for certain types of employment, petitioning the court for an expunge or seal, or when they are a defendant in a criminal prosecution.<sup>12</sup>

Currently, a person may only expunge or seal one record, may not expunge or seal any record that resulted in a conviction, and may not expunge or seal a record if he or she has previous convictions. Additionally, only the court can order a record to be expunged or sealed.

PCB CRJS 15-05, which is tied to this PCB, makes substantial changes to Florida's expunge and seal laws by creating nonjudicial processes for the expunction and sealing of criminal history records. The bill retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication.

PCB CRJS 15-05 expands the types of records that may be expunged or sealed by:

- Creating s. 943.0584, F.S., which permits a person to obtain an unlimited number of "nonjudicial expunctions" for records that resulted in a no-information, a dismissal, a dismissal based on the lawful self-defense exception, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- Amending ss. 943.0585 and 943.059, F.S., to permit a person to obtain one court-ordered expunction or "nonjudicial sealing" of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; and
- Amending s. 943.059, F.S., to permit a person to obtain one "nonjudicial sealing" of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction.

### **Effect of the Bill**

The PCB makes records expunged or sealed pursuant to PCB CRJS 15-05 confidential and exempt from public records.

The PCB repeals the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 943.0584, F.S., relating to nonjudicial expunction of criminal history records.

Section 2. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 3. Amends s. 943.059, F.S., relating to nonjudicial sealing of criminal history records.

Section 4. Provides a public necessity statement.

Section 5. Provides an effective date to be the same as that of PCB CRJS 15-05 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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<sup>11</sup> s. 943.059(4)(c), F.S.

<sup>12</sup> ss. 943.0585(4)(a) and 943.059(4)(a), F.S.

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

Requirements for Legislative Review

Section 119.15(3), F.S., requires that any public records exemption must be repealed five years after the enactment or substantial amendment of the exemption unless reviewed and saved from repeal by the Legislature. When reviewing an exemption, s. 119.15(6)(a), F.S., requires the Legislature to consider the following matters:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create the need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**